

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. **TSCA-08-2003-0004**

IN THE MATTER OF:)
) COMPLAINT AND EXPEDITED
MFG, Inc.) SETTLEMENT AGREEMENT (CESA)
4900 Pearl East Circle)
Suite 300W)
Boulder, CO 80301)
Respondent.)

Complainant, United States Environmental Protection Agency, Region 8 ("EPA") or ("Complainant"), and MFG, Inc. (hereinafter "Respondent") by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY STATEMENT

1. EPA has jurisdiction over this matter pursuant to section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. EPA regulations authorized by the statute governing polychlorinated biphenyls ("PCBs") are set out in part 761 of title 40 of the Code of Federal Regulations (CFR) and violations of the regulations constitute violations of section 15 of TSCA, 15 U.S.C. § 2614.

3. This Complaint and Expedited Settlement Agreement ("CESA") is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 CFR § 22.13(b), and executed pursuant to 40 CFR § 22.18(b)(2) and (3) of the Consolidated Rules of Practice.

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.

5. Respondent waives its rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this CESA.

6. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CESA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

7. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not

limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

8. This CESA contains all terms of the settlement agreed to by the parties.

9. Respondent is a "person" and a "generator of PCB waste" within the meaning of 40 CFR §761.3, and therefore subject to the requirements of TSCA and the regulations at 40 CFR part 761.

10. The undersigned EPA, Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, which authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA.

B. ALLEGED VIOLATIONS

1. Continuum Lakewood Development Company, LLC (Continuum) is the current owner of the Villa Italia property, located at 7200 West Alameda Avenue, Lakewood, Colorado.

2. Continuum, through several contractors independent of Respondent, conducted remediation and demolition activities at the former Montgomery Wards Garage at the Villa Italia property under a Notification of PCB Activity and a self-implemented on-site cleanup and disposal of PCB remediation waste plan approved by EPA in accordance with 40 CFR 761.61.

3. Oil-stained concrete, or "PCB-contaminated waste," as defined at 40 CFR 761.3, was discovered near the hydraulic lift area at the former Montgomery Wards garage building.

4. Five wipe samples of the stained concrete were taken by Continuum's contractor, two of which showed PCB concentrations slightly over 10 µg/100 cm².

5. Instead of performing core sampling on the concrete, Continuum's contractor drummed up the solid waste to ship it to an approved PCB disposal facility.

6. Respondent was engaged in environmental investigations, unrelated to PCBs, at the Villa Italia property on behalf of XL Environmental, an insurance company with whom Continuum was negotiating reimbursement of certain costs under a policy issued to Continuum's predecessor and assigned to Continuum.

7. Respondent accumulated several drums of investigation-derived waste pursuant to its investigation of the Villa Italia property, and intended to retrieve such waste and deliver it to a Subtitle D landfill.

8. Respondent's subcontractor, RMCAT Environmental Services, Inc., intending to retrieve the investigation-derived waste, mistakenly retrieved the eight drums of oil stained concrete and disposed the drums of PCB waste at the Tower Road Landfill rather than in

accordance with 40 CFR 761.61.

9. Respondent's subcontractor, RMCAT Environmental Services, Inc., failed to follow the EPA approved remediation waste plan and disposed the eight drums of PCB waste at the Tower Road Landfill rather than in accordance with 40 CFR § 761.61.

10. Respondent failed to prepare a manifest for the eight drums of PCB waste in accordance with 40 CFR §§ 761.207.

11. Respondent's failure to prepare a manifest and properly dispose of the eight Drums of PCB remediation waste constitutes one violation of 40 CFR § 761.207 and one violation of 40 CFR § 761.61, and therefore constitutes two violations of TSCA Section 15, 15 U.S.C. 2614.

12. Section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. In arriving at the amount of the penalty proposed below, EPA, as required by section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the following factors: the nature, circumstances, extent and gravity of the violation, and with respect to respondent, the ability to pay, effect on ability to continue in business, any history of prior violations, degree of culpability, and such other matters as justice may require.

13. EPA has written a penalty policy entitled, Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990, that provides a rational, consistent and equitable method for applying these statutory factors to the facts and circumstances of specific cases. Using the policy to apply the statutory factors to the facts of this case, EPA offers this CESA under its expedited enforcement procedures in order to settle the violations alleged based upon the findings noted above, for the total civil penalty amount of six thousand dollars (\$6000.00).

C. CIVIL PENALTY

1. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, EPA has determined that an appropriate civil penalty to settle this action is the amount of six thousand dollars (\$6,000.00).

2. Within thirty days of receipt of the Final Order issued by the Regional Judicial Officer, Respondent consents and agrees to pay the civil penalty in the amount of six thousand dollars (\$6,000.00) by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to: Mellon Bank

EPA Region 8
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251

A copy of the transmittal of payment shall be sent simultaneously to the following address:

Tina Artemis
Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, Co 80202-2466

(and)

Brenda L. Morris
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, Co 80202-2466

3. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 CFR § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 CFR §§ 102.13(d) and (e).

D. TERMS AND CONDITIONS

1. This CESA constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in the CESA. Nothing in this CESA is intended to nor shall be construed to operate in any way to resolve any criminal liability, if any, or any liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Compliance with this CESA shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

2. Failure by Respondent to comply with any of the terms of this CESA shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

3. Nothing in this CESA shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.

4. Each undersigned representative of the parties to this CESA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CESA and to execute and legally bind that party to this CESA.

5. The parties agree to submit this CESA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

6. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CESA.

7. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CESA.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 300 (ENF-L)
Denver, CO 80202

9/29/03

Date

SIGNED

David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program

9/29/03

Date

SIGNED

Martin Hestmark, Director
Technical Enforcement Program

9/29/03

Date

SIGNED

Brenda L. Morris, Attorney
Legal Enforcement Program
999 18th Street, Suite 300
Denver, Colorado 80202-2466

MFG, INC., Respondent.

9/29/03

Date

SIGNED

Craig Hamilton, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **MFG, INC., DOCKET NO.: TSCA-08-2003-0004** was filed with the Regional Hearing Clerk on September 29, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Craig Hamilton, President
MFG, Inc.
4900 Pearl East Circle
Suite 300W
Boulder, CO 80301

SIGNED

September 29, 2003

Tina Artemis
Regional Hearing Clerk

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 29, 2003.